

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**In re: James B. Beverly, Jr.
Debtor**

**Case No. 15-30718-KRH
Chapter 13**

**Address: 4346 Lewiston Plank Road
Burkeville, VA 23922**

Social Security No:xxx-xx-7064

NOTICE OF MOTION TO CONTINUE AUTOMATIC STAY AND HEARING

The above named Debtor, by counsel, has filed a Motion for Continuation of the Automatic Stay with the Court pursuant to 11 U.S.C. § 362(c)(3)(B). Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one.

NOTICE IS HEREBY GIVEN THAT A HEARING ON THIS MOTION WILL BE HELD ON MARCH 4, 2015 AT 12:00 PM IN THE HONORABLE KEVIN R. HUENNEKENS' COURTROOM, UNITED STATES BANKRUPTCY COURT, 701 EAST BROAD STREET, ROOM 5000, RICHMOND, VIRGINIA 23219.

If you want to be heard on this matter, then no later than three (3) days before the date of the hearing, you or your attorney must:

1. File with the court, at the address below, a written response pursuant to Local Rule 9013-1(H). If you mail your response to the Court for filing, you must mail it early enough so that the Court will **receive** it on or before the date stated above.

Clerk of Court
United States Bankruptcy Court
701 East Broad Street, Suite 4000
Richmond, Virginia 23219-3515

Julia B. Adair (VSB #45130)
Hathaway Adair, P.C.
3412 Cutshaw Avenue
Richmond, VA 23230
Telephone (804) 257-9944
Counsel for Debtor

2. You must also mail a copy to:

Julia B. Adair, Esquire
Hathaway Adair, P.C.
3412 Cutshaw Avenue
Richmond, VA 23230

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting that relief.

Respectfully submitted,
James B. Beverly, Jr.
By Counsel:

/s/ Julia B. Adair (VSB# 45130)
Julia B. Adair (VSB #45130)
Hathaway Adair, P.C.
3412 Cutshaw Ave.
Richmond, VA 23230
Phone: 804-257-9944
Fax: 804-353-9941
Counsel for Debtor

CERTIFICATE OF SERVICE

I certify that on, February 17, 2015, I have transmitted a true copy of the foregoing document electronically through the Court's CM/ECF system or by mail to the Debtor, Chapter 13 trustee , the United States trustee if other than by the electronic means provided for at Local Bankruptcy Rule 2002-1, and to all creditors, counsel of record in the previous case, and parties of interest in the mailing matrix attached hereto.

/s/ Julia B. Adair
Counsel for Debtor

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
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Debtor

Case No. 15-30718-KRH
Chapter 13

**MOTION TO CONTINUE AUTOMATIC STAY AND
MEMORANDUM IN SUPPORT THEREOF**

COMES NOW James B. Beverly, Jr. (the "Debtor"), by counsel, pursuant to 11 U.S.C. § 362(c)(3)(B) and files the following Motion to Continue Automatic Stay and Memorandum in Support Thereof, and affirmatively states as follows:

1. Jurisdiction of this Court over the instant matter is based upon 28 U.S.C. §§1334 and 157 in that this action arises in and relates to the bankruptcy case of the Debtor.
2. This is a core proceeding under 28 U.S.C. §157.
3. Venue is proper pursuant to 28 U.S.C. §1409.
4. On February 13, 2015 (hereinafter the "Petition Date"), the Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code (the "present case").
5. Within the year prior to filing the instant case, Debtor has been a debtor in one (1) pending Chapter 13 bankruptcy case (the "prior case"), which was filed on April 23, 2013, and was dismissed on January 22, 2015 (Case No. 13-32246-KLP) on Motion of the Trustee for payment default.
6. In the present case, Debtor has proposed a Chapter 13 Plan (the "Plan") that commits to pay the Trustee all projected disposable income, \$500.00 per month for a

Julia B. Adair (VSB #45130)
Hathaway Adair, P.C.
Richmond, VA 23230
Tel: 804-257-9944
Fax: 804-353-9941
Counsel for Debtor

period of twelve (12) months and \$740.00 a month for a period of forty-eight (48) months.

Debtor proposes to pay directly the mortgage on his residence, rental property and commercial property, and to pay through the Trustee as follows:

- a. Mortgage arrears owed to SLM Mortgage Corporation;
- b. Mortgage arrears owed to Citizens Bank & Trust on Debtor's commercial property;
- c. The value of Debtor's 2007 Toyota Tacoma secured by a lien held by Santander Consumer USA;
- d. Priority tax liability will be paid in full to the Virginia Department of Taxation;
- e. Non-priority unsecured creditors in full.

7. Pursuant to U.S.C. § 362(c)(3), the automatic stay in the present case will expire on March 15, 2015, unless extended by the Court.

8. Because the Debtor's prior case was pending within the year preceding the petition date, the Debtor must demonstrate to the Court by clear and convincing evidence that the instant case was filed in good faith to overcome the presumption that it was not filed in good faith. 11 U.S.C. §362(c)(3)(C).

9. The Debtor affirmatively states that he has acted in good faith and requests that the Court grant an extension of the automatic stay as to all creditors, as to Debtor and Debtor's property, and as to the property of the estate for the duration of the instant case. In support thereof, Debtor submits an Affidavit, which is attached hereto as Exhibit "1" and incorporated herein by this reference.

10. Applying the nonexclusive list of factors illuminated in Neufeld v. Freeman,

794 F.2d 149, 152 (4th Cir. 1986), that the Court may consider in its determination of whether the Debtor's case was filed in good faith, the Debtor sets forth the following:

a. The Plan proposes to pay the unsecured creditors in full. A liquidation analysis indicates such a dividend is more than the unsecured creditors would receive in a Chapter 7 bankruptcy.

b. Debtor's financial situation is that he is retired and is receiving Workman Compensation Benefits and his wife is employed by Nottoway County. He and his wife also operate a small restaurant. During the prior case, Debtor incurred a large unanticipated tuition bill when his son's financial aid was interrupted. Debtor was unable to bring his plan payments current prior to the dismissal of his case. Debtor's expenses have stabilized and he will be able to pay his creditors in full through his Chapter 13 plan payments. Debtor does not maintain unnecessary expenses for luxury items but allows for the maintenance of an average standard of living for Debtor's household and the successful completion of the terms of the Chapter 13 Plan.

c. The period of time in which payments will be made is reasonable and is based upon the Debtor's best efforts.

d. Debtor's non-priority unsecured debts are estimated to be approximately \$10,805. Debtor has not incurred any unsecured debt for luxury goods or services or any unsecured debt due to revolving credit accounts or pay day loans within the 90 days prior to filing the instant case.

e. The instant Motion is required due to the fact that Debtor was a debtor in a prior case that was dismissed within one (1) year of the Filing Date hereof. The Affidavit attached hereto as Exhibit "1" describes fully the reasons that the prior

case was dismissed. Debtor incorporates such explanation herein by reference. Debtor's hardships do not indicate an abuse of the bankruptcy system; rather, they indicate an honest but thus far unsuccessful attempt to financially reorganize.

f. Debtor has fully disclosed all assets, liabilities, and pertinent information regarding personal and financial affairs and is prepared to cooperate fully with the Chapter 13 Trustee.

g. There are no unusual or exceptional problems facing Debtor.

11. Debtor further states that he did not attempt to delay payments of debts nor did he delay in filing the present case. The debts in this case arose over a period of time extending back several years as a result of ordinary living expenses that Debtor became unable to repay.

12. Debtor affirmatively states that the motive in filing this case is to apply best efforts to repay creditors and receive a fresh start through bankruptcy.

WHEREFORE, for the foregoing reasons, James B. Beverly, Jr. respectfully requests this Honorable Court to enter an Order extending the automatic stay as to all creditors, as to Debtor and Debtor's property, and as to the property of the estate for the duration of the instant case, and for such other and further relief as to the Court shall be deemed appropriate.

Respectfully submitted,
James B. Beverly, Jr.
By Counsel:

/s/ Julia B. Adair (VSB# 45130)
Julia B. Adair (VSB #45130)
Hathaway Adair, P.C.
3412 Cutshaw Ave.
Richmond, VA 23230
Phone: 804-257-9944

CERTIFICATE OF SERVICE

I certify that on February 16, 2015, I have transmitted a true copy of the foregoing document electronically through the Court's CM/ECF system or by mail to the Debtor, Chapter 13 trustee, the United States trustee if other than by the electronic means provided for at Local Bankruptcy Rule 2002-1, and to all creditors, counsel of record in the previous case and parties in interest of the mailing matrix attached hereto.

/s/ Julia B. Adair
Counsel for Debtor

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
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**EXHIBIT "1" TO MOTION TO CONTINUE STAY AND
MEMORANDUM IN SUPPORT THEREOF**

AFFIDAVIT OF JAMES B. BEVERLY, JR.

BEFORE ME, the undersigned authority, personally appeared James B. Beverly, Jr. known to me, and upon him oath stated as follows:

1. My name is James B. Beverly, Jr. I am above the age of 18 years and competent to make this affidavit. I have personal knowledge of the facts set forth in this affidavit.
2. I reside at 4346 Lewiston Plank Road, Virginia 23922.
3. I have income from Workman Compensation Benefits and my wife is employed by Nottoway County. We also operate a small restaurant. I do not anticipate my income decreasing in the future.
4. I am the debtor in the present bankruptcy case.
5. I have been the debtor in one bankruptcy case ("Prior Case"). The Prior Case dismissed during the one (1) year prior to filing the present case.
6. The Prior Case was a Chapter 13 bankruptcy case filed on April 23, 2013, and was dismissed on January 22, 2015 due to a payment default (Case No. 13-32246-KLP).
7. I defaulted on my plan payments because I incurred a large unanticipated tuition bill for my son that if not paid, he would not be able to continue his coursework. His student loan issues have been resolved and my expenses have stabilized.
8. I believe that this change in circumstances will enable me to successfully complete this bankruptcy case.

9. I have listed all of my assets and all of my debts and have fully and accurately disclosed all of my income and expenses in the Schedules in this case.
10. I will propose the following treatment of my creditors in my Chapter 13 Plan: Mortgage arrears owed to SLM Mortgage Corporation and Citizens Bank & Trust will be brought current; Santander will be paid for the value of the 2007 Toyota Tacoma securing its lien; priority tax liability owed to the Virginia Department of Taxation will be paid in full; and my unsecured creditors will be paid in full.
11. I am proposing to pay the Trustee all projected disposable income, \$500.00 per month for twelve (12) months then \$740.00 per month for forty-eight (48) months.
12. After the dismissal of my previous case, I acted as fast as I reasonably could to retain a bankruptcy attorney to file this case because I want to use the bankruptcy system to resolve my debts.
13. My debts arose as a result of ordinary living expenses and is not the result of any purchases of luxury goods or services.
14. I desire to use the bankruptcy system to obtain a fresh start and have not been attempting to evade my responsibilities or delay my creditors' attempts to collect.
15. My income is substantially consistent and likely to remain so during my case. My household expenses are not likely to change substantially. I believe I will be able to make my payments to the Trustee and meet my other obligations as they come due throughout this case.

WITNESS the following signature and seal this 11th day of February, 2015.

/s/ James B. Beverly, Jr.(seal)
James B. Beverly, Jr.

CERTIFICATE OF ACKNOWLEDGMENT

Commonwealth of Virginia
City of Richmond, to wit:

The foregoing instrument was acknowledged before this 11th day of February, 2015,
by James B. Beverly, Jr.

My Commission Expires: 6/30/2017

/s/Julia Bonham Adair
Notary Public

7570546
Notary Registration Number

Berkeley, Curry & Cook
1301 N. Hamilton Street
Ste 200
Richmond, VA 23230-3959

Capital One
c/o Bass & Associates
3936 E. Ft Lowell Rd STE
200
Tucson, AZ 85712

Diane W. Beverly
4346 Lewiston Plank Rd
Burkeville, VA 23922

MCV Collection Dept
P. O. Box 980462
Richmond, VA 23298

Office of the US Trustee
701 E. Broad Street
Room 4304
Richmond, VA 23219

Santander
c/o Jason Kulas, President
1601 Elm Street, STE 800
Dallas, TX 75201

SCA Cred Svc
1502 Williamson Road NE
Roanoke, VA 24012-5125

VA Dept. of Taxation
P. O. Box 2156
Richmond, VA 23218-2156

BWW Law Group
8100 Three Chopt Rd STE
240
Re: Suntrust
Henrico, VA 23229

Citizens Bank & Trust
126 S. Main Street
Blackstone, VA 23824

eCast Settlement
Corporation
c/o Bass & Associates
3936 E. Ft Lowell, Suite 200
Tucson, AZ 85712

Ocwen Loan Servicing
P.O. Box 24605
West Palm Beach, FL
33416-4605

OneMain Financial
6801 Colwell Blvd
C/S Care Dept
Irving, TX 75039

Santander Consumer USA
Attn: Bankruptcy
P.O. Box 961245
Fort Worth, TX 76161-0244

SLM Mortgage Corporation
300 Continental Drive
2 South
Newark, DE 19713-4322

CAP1/BSTBY
P. O. Box 30253
Salt Lake City, UT 84130

Citizens Bank & Trust
c/o Jennifer West, Esq.
411 E. Franklin St. STE 600
Richmond, VA 23219-2200

Kyle Thomas Libby
Hunoval Law Firm, PLLC
501 Minuet Lane, #104A
Charlotte, NC 28217

Ocwen Loan Servicing
P.O. Box 24738
West Palm Beach, FL
33416-4738

Petersburg Federal Reform
P.O. Box 1298
Hopewell, VA 23860

Sara A. John
M. Richard Epps, P.C.
605 Lynnhaven Pkwy
Virginia Beach, VA 23452

Suntrust Mortgage
Bankruptcy Dept RVW
3034
P.O. Box 22767
Richmond, VA 23261